

SECOND REGULAR SESSION  
SENATE COMMITTEE SUBSTITUTE FOR  
HOUSE COMMITTEE SUBSTITUTE FOR  
**HOUSE BILL NO. 1758**  
**96TH GENERAL ASSEMBLY**

---

Reported from the Committee on Health, Mental Health, Seniors and Families, May 10, 2012, with recommendation that the Senate Committee Substitute do pass.

5552S.06C

TERRY L. SPIELER, Secretary.

---

**AN ACT**

To repeal section 453.005, RSMo, and to enact in lieu thereof two new sections relating to rights of persons with parental relationships.

---

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 453.005, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 452.398 and 453.005, to read as follows:

**452.398. 1. It is the goal of this section to protect the psychological, emotional, and physical well-being of Missouri children by ensuring continuing interaction between a minor child and those persons with whom the minor child shares a substantial bond regardless of such person's biological connection to the minor child. Nothing in this section shall be construed or is intended to affect the procedure for termination of parental rights under chapter 211. Nothing in this section shall be construed or intended to revive the rights of a natural parent whose rights have previously been terminated under chapter 211.**

**2. As used in this section, the following terms shall mean:**

**(1) "Detrimental impact to the minor child", includes but is not limited to circumstances that may cause psychological, emotional, or physical harm to a minor child;**

**(2) "Natural parent", a biological or legal parent whose rights have not been terminated;**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

17           (3) "Ongoing relationship", a parent/child relationship with  
18 substantial continuity that has existed or did exist for at least one year;

19           (4) "Parent/child relationship", a relationship that exists or did  
20 exist between a minor child and a person other than a natural parent  
21 in which the person claiming such relationship has:

22           (a) Performed the duties of a parent and provided for the minor  
23 child's basic physical needs for food, clothing, shelter, and incidental  
24 necessities; and

25           (b) Provided the minor child with necessary care, education,  
26 structure, and discipline; and

27           (c) Developed and sustained a relationship with the minor child  
28 through interaction, companionship, interplay, and mutuality that  
29 fulfilled the minor child's psychological and emotional needs.

30           3. Any person who has a parent/child relationship with a minor  
31 child and who is not the minor child's natural parent may petition a  
32 court of competent jurisdiction under section 452.740 either by  
33 independent petition or by intervention in a pending action, including  
34 but not limited to an action pending in the juvenile division of a circuit  
35 court, to enter a judgment establishing custody and visitation rights to  
36 sustain and protect an ongoing relationship with the minor child. An  
37 action under this section may be filed only if:

38           (1) At least one of the natural parents is deceased; or

39           (2) At least one of the natural parents is unknown; or

40           (3) The whereabouts of at least one of the natural parents is  
41 unknown and unascertainable for a period of one year; or

42           (4) The parental rights of at least one biological parent have  
43 been terminated; or

44           (5) The remaining parent has not had an ongoing parent/child  
45 relationship with the minor child in question for a period of one year  
46 prior to the filing of a petition under this section.

47           4. To qualify under this section, the petitioner or intervenor:

48           (1) Is or was married to the minor child's natural parent  
49 pursuant to the laws and constitution of the state of Missouri;

50           (2) Is or was named on the birth certificate of the minor child at  
51 some point during the minor child's life and the parental rights have  
52 not previously been terminated under sections 211.442 to 211.490; or

53           (3) Materially relied upon a natural parent's representation that

54 the petitioner or intervenor was or could be the minor child's natural  
55 parent.

56 5. The petitioner or intervenor shall establish by a  
57 preponderance of the evidence that an ongoing parent/child  
58 relationship exists or did exist. In determining whether such a  
59 relationship exists or did exist, the court shall consider all relevant  
60 factors, including:

61 (1) The age of the minor child;

62 (2) The minor child's mental and emotional maturity;

63 (3) Whether the minor child holds or did in the past hold a belief  
64 that the petitioner or intervenor is his or her parent;

65 (4) The duration and extent of the minor child's interaction with  
66 the petitioner or intervenor prior to the filing of the petitioner's or  
67 intervenor's action;

68 (5) Whether a natural parent fostered, condoned, or promoted  
69 the relationship between the minor child and the petitioner or  
70 intervenor;

71 (6) The extent to which the petitioner or intervenor has provided  
72 for the minor child's support, health, education, and welfare;

73 (7) The extent to which the petitioner or intervenor has  
74 performed the role of parent;

75 (8) The extent to which the petitioner or intervenor has fulfilled  
76 the minor child's psychological needs for a parent;

77 (9) Whether the petitioner or intervenor, the natural parent, and  
78 the minor child interacted with their community and third parties as  
79 a family.

80 6. In any proceeding initiated under this section, there is a  
81 rebuttable presumption that the natural parent acts in the minor  
82 child's best interests. In determining whether the presumption has  
83 been rebutted and whether to award custody or visitation rights over  
84 the objection of a natural parent, the court shall consider the  
85 psychological injury to the child resulting from a discontinuation of the  
86 relationship between the child and petitioner or intervenor and may  
87 consider factors including, but not limited to:

88 (1) Whether the petitioner or intervenor is or has been a primary  
89 caretaker of the minor child;

90 (2) Whether the natural parent has fostered, condoned, or

91 promoted the relationship between the minor child and the petitioner  
92 or intervenor;

93 (3) The duration and extent of the minor child's interaction with  
94 the petitioner or intervenor prior to the filing of the petitioner's or  
95 intervenor's action;

96 (4) The extent to which the petitioner or intervenor has provided  
97 for the minor child's support, health, education, and welfare;

98 (5) The extent to which the petitioner or intervenor has  
99 performed the role of parent;

100 (6) The extent to which the petitioner or intervenor has fulfilled  
101 the minor child's psychological needs for a parent;

102 (7) Whether the natural parent has unreasonably denied or  
103 limited contact between the minor child and the petitioner or  
104 intervenor;

105 (8) Whether the natural parent is unwilling or unable to  
106 adequately care for the minor child;

107 (9) The character, background, and parenting abilities of the  
108 parties.

109 7. If the court determines that a parent/child relationship exists  
110 and the parental presumption in subsection 6 of this section has been  
111 rebutted by a preponderance of the evidence, the court may grant  
112 visitation rights to the petitioner or intervenor in order to maintain a  
113 meaningful and continuing relationship with the minor child, if to do  
114 so is in the best interests of the child. The court may determine  
115 temporary custody or temporary visitation during the pendency of any  
116 proceeding pending entry of a final order.

117 8. If the court determines that a parent/child relationship exists  
118 or did exist and the parental presumption in subsection 6 of this  
119 section has been rebutted by clear and convincing evidence, the court  
120 may grant custody or visitation rights to the petitioner or intervenor  
121 in order to maintain a meaningful and continuing relationship with the  
122 minor child, if to do so is in the best interests of the child and the court  
123 finds that:

124 (1) The natural parent is unfit, unsuitable, or unable to be a  
125 custodian; or

126 (2) The welfare of the child requires the granting of such rights;  
127 or

128           **(3) The natural parent is listed in the central registry, as defined**  
129 **in section 210.110.**

130 **The court may order temporary visitation or contact rights under this**  
131 **subsection pending a final order.**

132           **9. If the court determines that custody or visitation between the**  
133 **minor child and the petitioner or intervenor is appropriate, the court**  
134 **may establish a parenting plan in accordance with subsection 8 of**  
135 **section 452.310 after consideration of the provisions of section 452.375,**  
136 **including an obligation of support pursuant to section 452.340.**

137           **10. The presumption described in subsection 6 of this section**  
138 **shall not exist in any action for modification of a judgment granted**  
139 **under this section.**

140           **11. The custody and visitation provisions of this section shall**  
141 **apply only to periods of visitation or custody accruing subsequent to**  
142 **the filing of a petition under this section. This subsection shall not,**  
143 **however, limit the court's ability to consider evidence of past**  
144 **circumstances of the parties and the child, or to find that a parent/child**  
145 **relationship exists or existed prior to August 28, 2012.**

146           **12. Notice of any action under this section shall be given in a**  
147 **manner prescribed by law to the natural parent or parents, to any**  
148 **person who has custody of the minor child in question, and to any**  
149 **person the petitioner or intervenor knows would qualify under**  
150 **subsection 4 of this section.**

151           **13. If a military parent is required to be separated from a child**  
152 **due to deployment, a court shall not enter a final order under this**  
153 **section until ninety days after the deployment ends. Deployment or the**  
154 **potential for future deployment of a military parent shall not constitute**  
155 **grounds sufficient to support a custody or visitation order under this**  
156 **section.**

157           **14. If a parent is required to be separated from a child due to**  
158 **employment, and the parent supports the child on an ongoing basis,**  
159 **such separation shall not constitute grounds sufficient to support a**  
160 **custody or visitation order under this section.**

          453.005. 1. The provisions of sections 453.005 to 453.400 shall be  
2 construed so as to promote the best interests and welfare of the child in  
3 recognition of the entitlement of the child to a permanent and stable home.

4           2. The **children's** division [of family services] and all persons involved

5 in the adoptive placement of children as provided in subdivisions (1), (2) and (4)  
6 of section 453.014 shall provide for the diligent recruitment of potential adoptive  
7 homes that reflect the ethnic and racial diversity of children in the state for  
8 whom adoptive homes are needed.

9       **3. The race or ethnicity of the adoptive child, the child's**  
10 **biological parents, or the prospective adoptive parents shall not be a**  
11 **consideration when determining the best interests of the child, the**  
12 **welfare of a child, the suitability and assessment of prospective**  
13 **adoptive parents, or the home of the prospective adoptive parents in**  
14 **adoptive placements. For any Native American child placed in**  
15 **protective custody, the division shall comply with the placement**  
16 **requirements set forth in 25 U.S.C. Section 1915.** Placement of a child in  
17 an adoptive home may not be delayed or denied on the basis of race, color or  
18 national origin.

✓

Bill

Copy